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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

STATE OF ALABAMA,

PETITIONER,

v.

GREGORY ALLEN BROWN,

RESPONDENT.

# BRIEF IN OPPOSITION TO A WRIT OF CERTIORARI TO THE ALABAMA COURT OF CRIMINAL APPEALS

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# BRIEF IN OPPOSITION TO PETITION BY STATE OF ALABAMA IN BEHALF OF RESPONDENT GREGORY ALLEN BROWN

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14 pp

## THE PARTIES

Respondent agrees with Petitioner that all of the parties to the Proceeding in the Court's below are contained in the captions of both the Writ of Certiorari filed by the State and Respondent's reply thereto.

## TABLE OF CONTENTS


| | PAGE(S) |
|---|---|
| THE PARTIES..... | i |
| TABLE OF CASES..... | iii |
| STATEMENT OF THE CASE..... | 1 |
| SUMMARY OF THE ARGUMENT..... | 4 |
| ARGUMENT..... | 5 |
| CONCLUSION..... | 10 |

## TABLE OF CASES


| | PAGE(S) |
|---|---|
| Edwards v. Arizona, 451 U.S. 477 (1981)------- | 3 |
| Mueller v. Virginia, __U.S.__, 133 S.Ct. 1880, __L.Ed.2d__ (1993)---- | 7 |
| Smith v. Illinois, 469 U.S. 91 (1984)-------- | 7 |
| United States v. Davis, 36 M.J. 337(C.M.A.1993)--- | 7 |

## STATEMENT OF THE CASE

The Respondent generally agrees with the statement of the case as presented in the State of Alabama's Petition for Writ of Certiorari, however, there is one clear error which must be noted. On page seven(7) thereof, the State asserts that "No one made any promises to the Respondent, or offered him any hopes of reward or inducement in order to obtain his statement; nor did anyone tell Respondent that it would be better or worse for him if he did or did not make a statement.

The following representative examples of promises made should suffice to make the print:

1. "Now what you tell us and what you help yourself is up to you Greg, not us. If you didn't pull the trigger you

need to tell us .... the degree of heat your going to get is up to you Greg." (Page 29 of Exhibit 8 in Trial Record).

2. .... " we have got to have .... we have got to have you have you help yourself and if you are honest with us and you come through this stuff .... let's talk (Page 31 of Record Exhibit 8).

3. .... "but what I'm telling you is the quicker we get this done, the better it is going to be for you." (Page 31 of Exhibit 8 in Record).

These examples of implied and express promises of favorable treatment in return for a statement totally contradict the assertions in the State's writ. In fact, their inducements were a part of the Respondents State appeal which he felt was equally constitutionally compelling with respect to the exclusion of the confession

in question, the Alabama Court of Criminal Appeals specifically did not address the argument because of its perception that Edwards v. Arizona, 451 U.S. 477 (1981), properly applied, was conclusive on the same issue. (See page 34, Appendix A of State's petition for Certiorari).

## SUMMARY OF THE ARGUMENT

This case is one which is so clear on its facts that it presents no real problem with regard to the actual inappropriateness of law enforcement officials response to a request for an attorney made during interrogation under the basic tenets of Edwards v. Arizona, 451 U.S. 477 (1981).

## ARGUMENTS

I

Should this Court grant Certiorari to resolve averred conflicts among lower State and Federal Courts as to what is an appropriate response by law enforcement officials under Edwards v. Arizona while interrogating a defendant who makes a direct request for counsel?

In the instant case, the State of Alabama has chosen to present the issue as if the defendant had made an ambiguous reference to a lawyer and, thus, bring the question within the purview of those cases where this Court has noted "conflicting standards" being used by State and Federal courts for determining the consequences of ambiguous or equivocal assertions of the right to counsel by criminal defendants prior to their being interrogated, see

Smith v. Illinois, 469 U.S. 91, 83 L.Ed.2d. 488, 105 S.Ct. 490(1984), thus attempting to take advantage of language contained in a dissenting opinion by Justices White, Blackmon and Souter in the memorandum decision of Mueller v. Virginia, __U.S.__, 113 S.Ct. 1880, 123 L.Ed.2d. 498 (1993).

Respondent respectfully suggests that the instant case is of such a factual circumstances that no review is needed since, under any standard, the request for counsel was direct and unequivocal to the degree that the principles enunciated in Edwards, supra, comes into play without serious question. There is likewise no real issue concerning the extent to which interrogators may clarify a defendant's ambiguous invocation of his right to counsel as the State of Alabama suggests in citing United States v. Davis, 36 M. J.

337 (C.M.A. 1993) (Petition page 13).

In the present case, the defendant-respondent, who was admittedly terrified asked the interrogating officers if they were going to be mad if he asked to talk to an attorney, they simply agreed that he was frightened and should be and continued urging him to answer questions (R.33). Fortunately, the statement was videotaped and no one can plausibly contend anything other than that a frightened person asked if he would anger anyone by asking to see an attorney. This request-question was never directly answered, and the questioning continued in an interrogating fashion.

The State completely missed the thrust of this Court's holding in Smith, supra. Where the request for counsel is direct (would you mind if I talk to an attorney) and the questioning continues

unabated (which it did) then the remedy of Edwards, applies no matter what standard is used and this writ is not really needed to help clarify any real problem when review is limited to the uncontroverted facts.

The Alabama Appellate Court found a clear invocation of the right to counsel, it merely hypothesized that a lesser indication would have led to the same result if it accepted the State of Alabama's contention (which it did not).

II

The State contends that a court errs if it allows an ambiguous request for an attorney to vitiate a statement, when the police respond and discuss with the defendant the relative need for a statement and a lawyer and as a result the defendant argees to continue making a

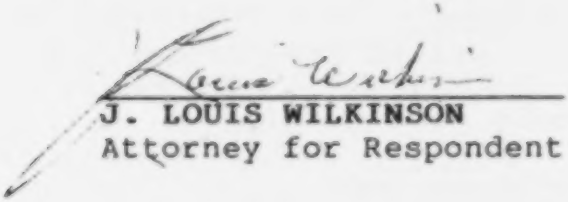
statement.

Respondent's counsel is simply unable to find in the record anything which vaguely resembles such a clarification. What the police did was agree that he had a serious problem and needed to tell them who pulled the trigger. Another officer said it was up to him like the first officer had said. In other words, who pulled the triggger? No one even used the word lawyer, friend, counsel or advice, save for the defendant. The interrogation simply continued. Petitioner's position is simply unsupportable when the transcript (as the state sets it out) is read in context.

## CONCLUSION

This court should deny the State's petition without further consideration.

Respectfully submitted,



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